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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1951.

No. 317.

THE DAY-BRITE LIGHTING, INC.,

Appellant,

vs.

STATE OF MISSOURI.

Appeal from the Supreme Court of the State of Missouri.

APPELLANT'S PETITION FOR REHEARING.

WILLIAM H. ARMSTRONG

and

HENRY C. M. LAMKIN,

Counsel for Appellant-
Petitioner.

LOUIS J. PORTNER,

COBBS, BLAKE, ARMSTRONG, TEASDALE & ROOS,

Of Counsel.

SUPREME COURT OF THE UNITED STATES.

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STATE OF MISSOURI.

Appeal from the Supreme Court of the State of Missouri.

APPELLANT'S PETITION FOR REHEARING.

Comes now The Day-Brite Lighting, Inc., Appellant in the above entitled cause, and, in accordance with Rule 33 of the Revised Rules of the Supreme Court of the United States, respectfully prays this court that it be granted a rehearing in the above entitled cause. For grounds for such motion the Appellant states and alleges as follows:

I.

The majority opinion of this court overlooked material matters of fact and law when it failed to justify an admitted taking of property without due process of law.

Said opinion implied the taking was under exercise of police power but failed to consider or discuss Appellant's position that such exercise was not reasonable under the circumstances in this case.

II.

The majority opinion of this court overlooked the test applied by this court in *West Coast Hotel Co. v. Parrish*, 300 U. S. 379, 57 S. Ct. 578, 81 L. Ed. 703, of considering, when deciding a case, "the economic conditions which have supervened and in the light of which the reasonableness of the exercise of the protective power of the State must be considered" when it stated: "We could strike down this law only if we returned to the philosophy of the *Lochner*, *Cappage* & *Adkins* cases."

III.

The majority opinion of this court overlooked material matters of law when it disregarded the historic adjudications limiting the exercise of police power to reasonable restraints by law tending to promote the health, comfort, safety, morals, and economic and physical welfare of society. This statute exercises no reasonable restraint and promotes none of those things.

IV.

The majority opinion of this court overlooked material matters of law and fact when it failed to discuss and justify the private maintenance of a public enterprise upheld by its decision.

V.

The majority opinion of this court overlooked material matters of law and fact when it failed to discuss and jus-

tify the denial to appellant of the right to equal protection of the laws, in that the law contains no assurance that the employee paid for time on election day either votes or is entitled to vote. The avowed purpose of the law is not accomplished by the legislation.

VI.

The majority opinion of this court overlooked material matters of law and fact when it failed to discuss and justify the denial to appellant of the right to equal protection of the laws by discriminatory legislation which artificially classifies voters into three groups of voters; those voters who are employers and hence must pay employees for time off on election day; voters who are hourly paid employees and hence get paid for taking time off on election day; and voters who are neither employers or employees and hence neither pay or are paid. The majority opinion of the court does not show how under the Constitution of the United States there could ever be any classification of voters when as regards voting all voters are "similarly situated", and have an equal duty to share the burdens while equally reaping the benefits.

VII.

The majority opinion of this court misinterpreted material matters of law and fact when it states appellant's argument on abrogation of freedom of contract "presses" on this court the philosophy of the *Lochner*, *Coppage* and *Adkins* cases. Appellant did not seek to have this court determine whether the policy which this law "expresses offends the public welfare," but determine whether this legislation that admittedly deprives one of property without due process of law, that confessedly abrogates contracts and obviously arbitrarily classifies voters can be upheld, because it safeguards the public welfare. It is not

a question of policy, but a yet unresolved question of the invasion of basic and fundamental rights.

VIII.

The majority opinion of this court overlooked material matters of fact and law when it found the statute "contains in form a minimum wage requirement" and that this Court left "debatable issues as respects business, economic and social affairs to legislative decision." The Supreme Court of Missouri construed the statute as one to prevent corrupt practices in elections (240 S. W. 2d, l. c. 894, 5) and this court must accept the construction placed on it by the highest court in Missouri (see Guaranty Trust Co. of New York v. Blodgett, 53 S. Ct. 244, 287 U. S. 509, 77 L. Ed. 463, and cases cited). It is submitted legislation passed for that purpose can not be upheld as labor legislation.

IX.

The majority opinion of this court erred in material matters and of law and fact when it impliedly found Grotemeyer was penalized by not being paid when he performed no services for which pay was to be paid, and when it failed to discuss and consider appellant's contention that the assessment of a fine against appellant under such circumstances constituted taking property without due process of law.

X.

The majority opinion of the court overlooked material matters of law and fact when it failed to consider and reconcile the fundamental distinction between legislation requiring payment of minimum wages for hours worked and legislation compelling payment of wages for time not worked at all.

XI.

The majority opinion of the court overlooked material matters of law and fact when it failed to consider, discuss or justify the Missouri legislature usurping a power not granted to it in Federal elections when that usurpation operated to deprive this appellant of property without due process of law. It further failed to consider, discuss or reconcile how this statute bore any relationship to the time, place or manner of holding Federal elections which is the limit placed on the state legislature's authority by the U. S. Constitution.

XII.

The majority opinion of this court overlooked material matters of fact when it failed to distinguish between the granting of the right to have an opportunity to vote and the granting of the right to be paid for voting.

XIII.

The majority opinion of the court overlooked material matters of law and fact when it failed to consider, discuss and explain how the right to vote is synonymous with the right to be paid for being absent from work on election day.

XIV.

The majority opinion of this court erred in material matters of fact and law when it failed to consider and explain why the costs of our civilization of which it speaks should not be equally borne by all of the recipients of the benefits of that civilization.

XV.

The majority opinion of this court failed to consider or explain why the upholding of this immoral legislation and the unrighteous compensation approved thereby is not a

confession of failure of popular representation government.

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and
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St. Louis, Missouri,
Of Counsel.

City of St. Louis, }
State of Missouri. } ss.

Certificate of Good Faith.

This affiant, Henry C. M. Lamkin, attorney of record for the appellant, The Day-Brite Lighting Company, being duly sworn on oath, states that the foregoing Petition for Rehearing is not made for vexation or delay, but in good faith and all sincerity for the causes enumerated in said Petition.

/s/ Henry C. M. Lamkin.

Subscribed and sworn to before me a notary public within and for the City and State aforesaid on this 11th day of March, 1952.

/s/ Ruby G. Moxley,
Notary Public.

My commission expires: July 11, 1954.